

212425



November 1, 2004

NOV 2 2004  
RECEIVED

**VIA U.P.S. OVERNIGHT**

Surface Transportation Board  
Section of Environmental Analysis  
1925 "K" St., N.W., Room 504  
Washington, DC 20423-0001

**Attention:** Victoria Rutson

**RE: Docket No. AB-33(Sub-No.224X), Union Pacific Railroad Company  
- Abandonment Exemption - - In Buffalo County, Nebraska  
(Kearney Industrial Lead)**

Dear Ms. Rutson:

Enclosed for filing in the above-referenced docket is the original and ten (10) copies of a Combined Environmental and Historic Report prepared pursuant to 49 C.F.R. §1105.7 and §1105.8, with a Certificate of Service, and a transmittal letter pursuant to 49 C.F.R. §1105.11.

Union Pacific anticipates filing a Petition for Exemption in this matter on or after November 22, 2004.

Sincerely,

A handwritten signature in dark ink, appearing to read "Mack H. Shumate, Jr.".

ENTERED  
Office of Proceedings

Enclosures

Public Room

O:\ABANDONMENTS\33-224X\STB-EHR.wpd

**Mack H. Shumate, Jr.**  
Senior General Attorney, Law Department

**UNION PACIFIC RAILROAD**  
101 N. Wacker Dr., Rm. 1920, Chicago, IL 60606-1718  
ph. (312) 777-2055 fx. (312) 777-2065

212425

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

NOV 2 2004  
RECEIVED

Docket No. AB-33 (Sub-No. 224X)

UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT EXEMPTION --  
IN BUFFALO COUNTY, NEBRASKA  
(KEARNEY INDUSTRIAL LEAD)

---

Combined Environmental and Historic Report

UNION PACIFIC RAILROAD COMPANY

Mack H. Shumate, Jr., Senior General Attorney  
101 North Wacker Drive, Room 1920  
Chicago, Illinois 60606  
(312) 777-2055  
(312) 777-2065 FAX

Dated: November 1, 2004  
Filed: November 1, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

---

Docket No. AB-33 (Sub-No. 224X)

UNION PACIFIC RAILROAD COMPANY  
-- ABANDONMENT EXEMPTION --  
IN BUFFALO COUNTY, NEBRASKA  
(KEARNEY INDUSTRIAL LEAD)

---

Combined Environmental and Historic Report

Union Pacific Railroad Company ("UP") submits this Combined Environmental and Historic Report pursuant to 49 C.F.R. § 1105.7(e) and 49 C.F.R. § 1105.8(d), respectively, for an exempt abandonment of the Kearney Industrial Lead from M. P. 3.01 to the end of the Line at M. P. 3.75, a distance of 0.74 miles near Kearney in Buffalo County, Nebraska (the "Line").

The Line traverses U. S. Postal Service Zip Code 68847. A Notice of Exemption to abandon the Lines pursuant to 49 C.F.R. § 1152.50 (no local traffic for at least two years) will be filed on or after November 22, 2004.

A map of the Line marked **Attachment No. 1** is attached hereto and hereby made part hereof. UP's letter to federal, state and local government agencies is marked **Attachment No. 2**, and is attached hereto and hereby made a part hereof. Responses received to UP's letters to date are attached and sequentially numbered as indicated below.

ENVIRONMENTAL REPORT  
49 C.F.R. § 1105.7(e)

(1) **Proposed action and alternatives.** Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.

**Response:** The proposed action involves the abandonment and discontinuance of service on the Kearney Industrial Lead from M. P. 3.01 to the end of the Line at M. P. 3.75, a distance of 0.74 miles near Kearney in Buffalo County, Nebraska (the "Line").

The Line was constructed by the Kearney & Black Hills Railway Company in 1887 and 1890. The Line was built with 100 pound jointed rail.

There are no shippers on the Line, and no commodities have originated or terminated on the Line for over two years. There is no overhead traffic over the Line. After abandonment, the closest rail line would be the remaining portion of the Kearney Industrial Lead at M.P. 3.01. This remaining portion of the Kearney Industrial Lead runs approximately three miles to UP's Nebraska main line which is also in Kearney.

There appears to be no reasonable alternative to the abandonment. UP received a request to purchase the land within the limits of the proposed abandonment from a local developer. UP approved the sale of the 16.77 acres with the understanding that an easement be reserved for railroad purposes until such time as the STB approved the abandonment and UP took the remaining steps necessary to consummate such abandonment. The sale closed effective November 18, 2003. The easement will need to be released when the abandonment is consummated.

Based on information in the UP's possession, the Line proposed for abandonment does not contain federally granted right-of-way

A map of the Line is attached hereto as **Attachment No. 1.**

(2) **Transportation System.** Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.

**Response:** There will be no effect on regional or local transportation systems and patterns and no diversion of traffic to other transportation systems or modes. The subject Line has not been used for freight traffic for at least two years.

(3) **Land Use.**(i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

(ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.

(iii) If the action effects land or water uses within a designated coastal zone, include the coastal zone information required by 49 C.F.R. § 1105.9.

(iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10905 and explain why.

**Response:** (i) UP is unaware of any adverse effects on local and existing land use plans. The Buffalo County Commissioners' Office has been contacted. To date UP has received no response.

(ii) The Natural Resource Conservation Service has been contacted. To date UP has received no response.

(iii) Not Applicable.

(iv) The right-of-way was sold effective November 18, 2003 to a local developer and is, therefore, not available for other public purposes.

(4) **Energy.** (i) Describe the effect of the proposed action on transportation of energy resources.

(ii) Describe the effect of the proposed action on recyclable commodities.

(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.

(iv) If the proposed action will cause diversions from rail to motor carriage of more than:

(A) 1,000 rail carloads a year, or

(B) an average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given.

**Response:** (i) There are no effects on the transportation of energy resources in view of the absence of rail shipments on the Line.

(ii) There are no recyclable commodities moved over the Line.

(iii) There will be no change in energy consumption from the abandonment.

(iv)(A)(B) There will be no rail-to-motor diversion.

(5) **Air.** (i) If the proposed action will result in either:

(A) an increase in rail traffic of at least 100% (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or

(B) an increase in rail yard activity of at least 100% (measured by carload activity), or

(C) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the

anticipated effect on air emissions. For a proposal under 49 U.S.C. §10901 (or §10505) to construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in §§(5)(i)(A) will apply.

**Response:** There is no such effect anticipated.

(5) **Air.** (ii) If the proposed action affects a class 1 or nonattainment area under the Clean Air Act, and will result in either:

(A) an increase in rail traffic of at least 50% (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line, or

(B) an increase in rail yard activity of at least 20% (measured by carload activity), or

(C) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. §10901 (or 49 U.S.C. §10505), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.

**Response:** There will be no increase in rail traffic, rail yard activity, or truck traffic as a result of the proposed action.

(5) **Air.** (iii) If transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.

**Response:** The proposed action will not affect the transportation of ozone depleting materials.

(6) **Noise.** If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:

(i) an incremental increase in noise levels of three decibels Ldn or more or

(ii) an increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g., schools, libraries, hospitals, residences,

retirement communities, and nursing homes) in the project area and quantify the noise increase for these receptors if the thresholds are surpassed.

**Response:** Not applicable.

(7) **Safety.** (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).

(ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spills; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.

(iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.

**Response:** (i) The proposed action will have no detrimental effects on public health and safety.

(ii) The proposed action will not affect the transportation of hazardous materials.

(iii) There are no known hazardous material waste sites or sites where known hazardous material spills have occurred on or along the subject right-of-way.

(8) **Biological resources.** (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.

(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

**Response:** (i) The U. S. Fish and Wildlife Service has been contacted and responded that the proposed abandonment does not appear to impact federal fish and wildlife management facilities, no federally listed threatened and endangered



species are expected to occur within the proposed project area, and they have no objection to the proposed abandonment. The U.S. Fish and Wildlife Services' response is attached hereto as **Attachment No. 3**, and is hereby made part hereof.

(ii) The National Park Service has been contacted. To date UP has received no response.

(9) **Water.** (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.

(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. § 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)

**Response:** (i) The Nebraska Department of Environmental Quality reviewed the proposed abandonment and had no comments regarding the project that would fall within their jurisdiction. The Department of Environmental Quality's response is attached hereto as **Attachment No. 4**, and is hereby made part hereof.

(ii) The U.S. Army Corps of Engineers has been contacted. To date UP has received no response.

(iii) It is not anticipated there will be any requirements for Section 402 permits.

(10) **Proposed Mitigation.** Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.

**Response:** There are no known adverse environmental impacts.

HISTORIC REPORT  
49 C.F.R. § 1105.8(d)

(1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action:

**Response:** See Attachment No. 1.

(2) A written description of the right-of-way (including approximate widths to the extent known), and the topography and urban and/or rural characteristics of the surrounding area:

**Response:** The right-of-way which was sold was 200 feet wide, being 100 feet on either side of the centerline of the track. The ground is level with the adjacent properties. The adjacent properties are a mixture of agricultural and residential use.

(3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area:

**Response:** There are no structures over fifty (50) years in age affected by the proposed abandonment.

(4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations to the extent such information is known:

**Response:** Not applicable.

(5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action:

**Response:** See UP's response to question (1) in the environmental Report for a brief history and description. The Line has not been used for rail operations for at least two years.

(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic:

**Response:** Not Applicable.

(7) An opinion (based on readily available information in the UP's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 C.F.R. § 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities):

**Response:** At this time, UP knows of no historic sites or structures or archeological resources in the project area. The Nebraska State Historical Society reviewed the proposed abandonment and indicated that their records indicate that the project does not contain recorded historic resources and that the abandonment in their opinion will have no effect on archeological, architectural or historic properties. The Society's response is attached as **Attachment No. 5**, and is hereby made part hereof.

(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain:

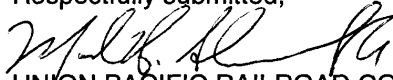
**Response:** UP does not have any such readily available information.

(9) Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specified nonrailroad owned properties or groups of properties immediately adjacent to the railroad right-of-way. Photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the locations and type of the site (i.e., prehistoric or native American):

**Response:** Not applicable.

Dated this 1<sup>st</sup> day of November, 2004.

Respectfully submitted,



UNION PACIFIC RAILROAD COMPANY  
Mack H. Shumate, Jr., Senior General Attorney  
101 North Wacker Drive, Room 1920  
Chicago, Illinois 60606  
(312) 777-2055  
(312) 777-2065 FAX

CERTIFICATE OF SERVICE  
OF THE  
COMBINED ENVIRONMENTAL AND HISTORIC REPORT

The undersigned hereby certifies that a copy of the foregoing Combined Environmental and Historic Report in Docket No. AB-33 (Sub-No. 224X), the Kearney Industrial Lead in Buffalo County, Nebraska was served by first class mail on the 1<sup>st</sup> day of November 2004 on the following:

**State Clearinghouse (or alternate):**

Nebraska Public Services Commission  
P. O. Box 94927  
Lincoln, NE 68509-4927

**State Environmental Protection Agency:**

Nebraska Department of Environmental Control  
P. O. Box 98922  
Lincoln, NE 68509-8922

**State Coastal Zone Management Agency  
(if applicable):**

Not Applicable

**Head of each County:**

Buffalo County Commissioners  
1512 Central, P.O. Box 1270  
County Courthouse  
Kearney, NE 68848-1270

**Environmental Protection Agency**

**(regional office):**

U.S. Environmental Protection Agency  
Region 7  
901 North 5th Street  
Kansas City, KS 66101

**U.S. Fish and Wildlife:**

U.S. Fish & Wildlife Service, Region 6  
Assistant Regional Director  
Box 25486  
Denver Federal Center  
Denver, CO 80225

**U.S. Army Corps of Engineers:**

U.S. Army Engineer District - Omaha  
106 South 15th Street  
Omaha, NE 68102

**National Park Service:**

William D. Shaddox  
Chief, Land Resources Division  
National Park Service  
1849 "C" St., N. W., #MS3540  
Washington, DC 20240

**U.S. Natural Resources Conservation Service:**

Natural Resource Conservation Service  
345 Federal Building  
100 Centennial Mall North  
Lincoln, NE 68508-3866

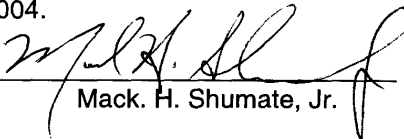
**National Geodetic Survey:**

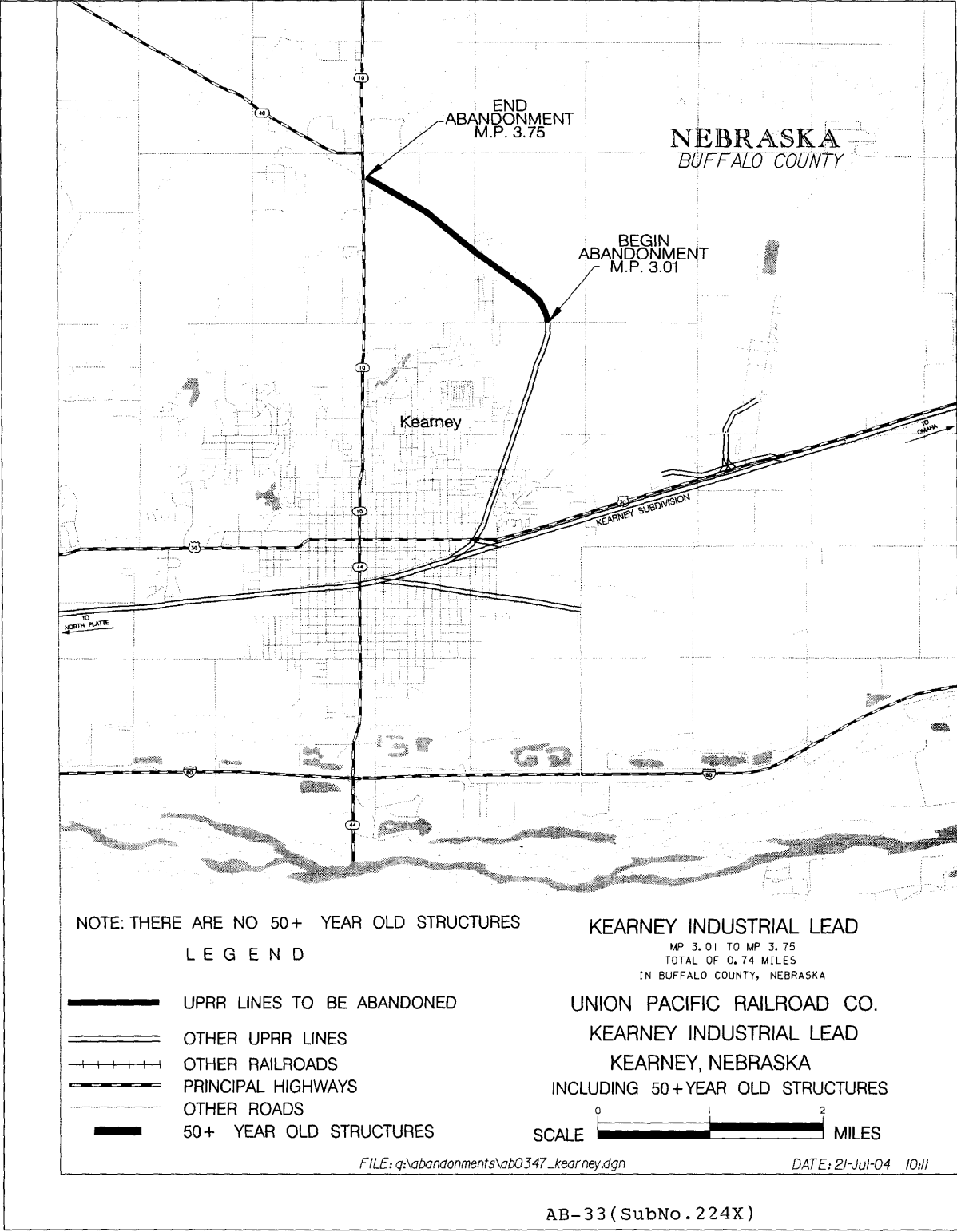
National Geodetic Survey  
Frank Maida, Chief  
Spatial Reference System Division  
NOAA N/NGS23  
1315 E-W Highway  
Silver Spring, MD 20910-3282

**State Historic Preservation Office:**

Nebraska State Historical Society  
P. O. Box 82554  
Lincoln, NE 68501

Dated this 1<sup>st</sup> day of November, 2004.

  
Mack. H. Shumate, Jr.





July 28, 2004

**State Clearinghouse (or alternate):**

Nebraska Public Services Commission  
P. O. Box 94927  
Lincoln, NE 68509-4927

**State Environmental Protection Agency:**

Nebraska Department of Environmental Control  
P. O. Box 98922  
Lincoln, NE 68509-8922

**State Coastal Zone Management Agency**

**(if applicable):**

Not Applicable

**Head of each County:**

Buffalo County Commissioners  
1512 Central, P.O. Box 1270  
County Courthouse  
Kearney, NE 68848-1270

**Environmental Protection Agency**

**(regional office):**

U.S. Environmental Protection Agency  
Region 7  
901 North 5th Street  
Kansas City, KS 66101

**U.S. Fish and Wildlife:**

U.S. Fish & Wildlife Service, Region 6  
Assistant Regional Director  
Box 25486  
Denver Federal Center  
Denver, CO 80225

**U.S. Army Corps of Engineers:**

U.S. Army Engineer District - Omaha  
106 South 15th Street  
Omaha, NE 68102

**National Park Service:**

William D. Shaddox  
Chief, Land Resources Division  
National Park Service  
1849 "C" St., N. W., #MS3540  
Washington, DC 20240

**U.S. Natural Resources Conservation Service:**

Natural Resource Conservation Service  
345 Federal Building  
100 Centennial Mall North  
Lincoln, NE 68508-3866

**National Geodetic Survey:**

National Geodetic Survey  
Edward J. McKay, Chief  
Spatial Reference System Division  
NOAA N/NGS2  
1315 E-W Highway  
Silver Spring, MD 20910-3282

**State Historic Preservation Office:**

Nebraska State Historical Society  
P. O. Box 82554  
Lincoln, NE 68501

Re: Proposed Abandonment of the Kearney Industrial Lead from Milepost 3.01 to the end of the Line at Milepost 3.75, a distance of 0.74 miles near Kearney, Buffalo County, Nebraska; STB Docket No. AB-33 (Sub-No. 224X)

Dear Sirs:

Law Department

UNION PACIFIC RAILROAD  
1400 Douglas St., Stop 1580, Omaha, NE 68179-1580  
fx. (402) 501-0127

Union Pacific Railroad Company plans to request authority from the Surface Transportation Board (STB) to abandon and discontinue service on the Kearney Industrial Lead from Milepost 3.01 to the end of the Line at Milepost 3.75, a distance of 3.3 miles near Kearney, Buffalo County, Nebraska. A map of the proposed track abandonment shown in black is attached.

Pursuant to the STB's regulations at 49 C.F.R. Part 1152, and the environmental regulations at 40 C.F. R. Part 1105.7, this is to again request your assistance in identifying any potential effects of this action as indicated in the paragraphs below. We do not anticipate any adverse environmental impacts. However, if you identify any adverse environmental impacts, describe any actions that are proposed in order to mitigate the environmental impacts. Please provide us with a written response that can be included in an Environmental Report, which will be sent to the STB.

LOCAL AND/OR REGIONAL PLANNING AGENCIES. State whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.

U. S. SOIL CONSERVATION SERVICE. State the effect of the proposed action on any prime agricultural land.

U. S. FISH AND WILDLIFE SERVICE (And State Game And Parks Commission, If Addressed). State (1) whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects, and, (2) whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.

STATE WATER QUALITY OFFICIALS. State whether the proposed action is consistent with applicable Federal, State or Local water quality standards. Describe any inconsistencies.

U. S. ARMY CORPS OF ENGINEERS. State (1) whether permits under Section 404 of the Clean Water Act (33 U.S. C. § 1344) are required for the proposed action and (2) whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.

U. S. ENVIRONMENTAL PROTECTION AGENCY AND STATE ENVIRONMENTAL PROTECTION (OR EQUIVALENT AGENCY). (1) Identify any potential effects on the surrounding area, (2) identify the location of hazardous waste sites and known hazardous material spills on the right-of-way and list the types of hazardous materials involved, and (3) state whether permits under Section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action.

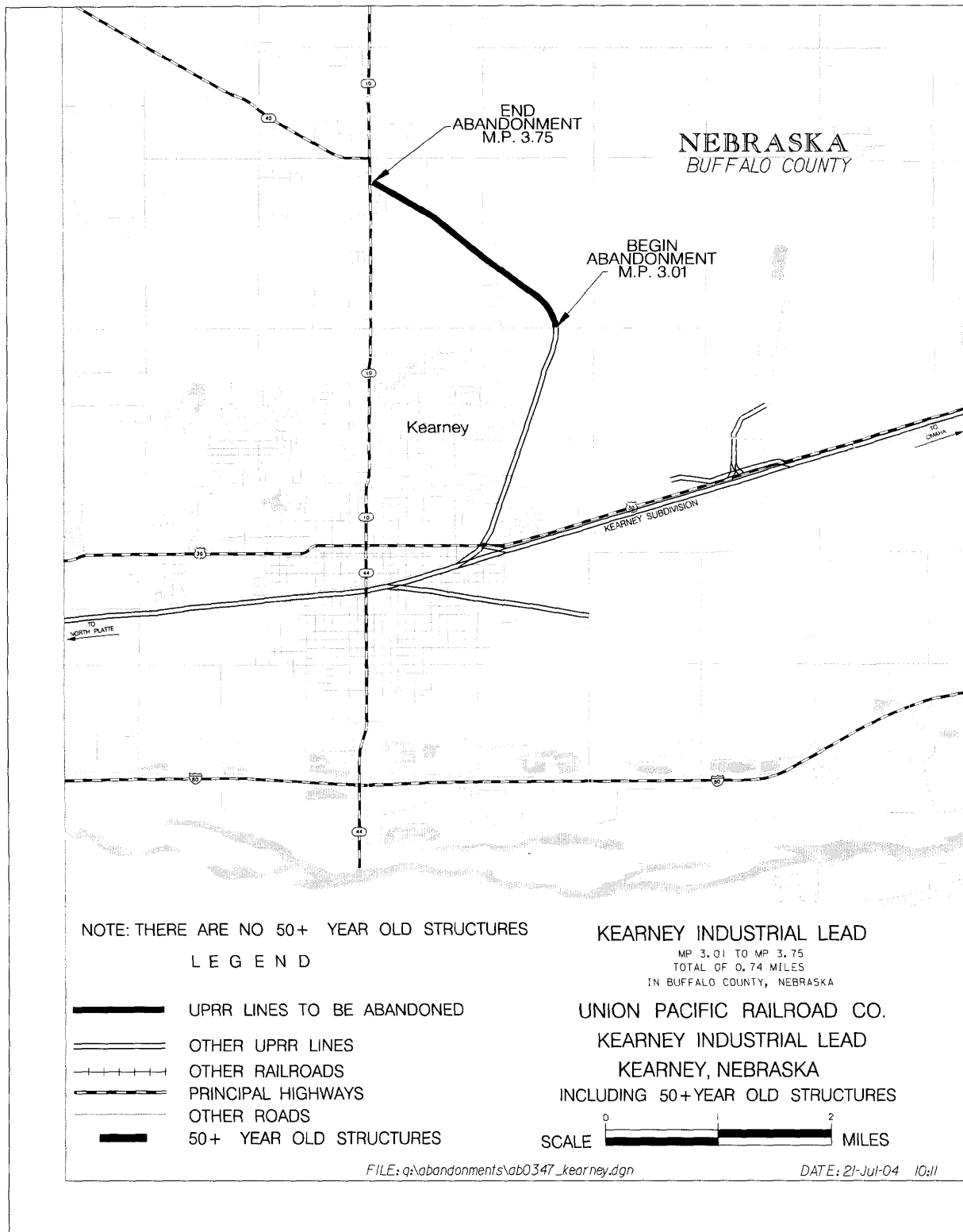


Thank you for your assistance. Please send your reply to Union Pacific Railroad, Mr. Chuck Saylor, 1400 Douglas Street, Mail Stop 1580, Omaha, NE, 68179. If you need further information, please contact me at (402) 544-4861.

Yours truly,

*Charles W. Saylor*  
Charles W. Saylor

Attachment





## United States Department of the Interior

### FISH AND WILDLIFE SERVICE

Ecological Services  
Nebraska Field Office  
203 West Second Street  
Grand Island, Nebraska 68801

August 5, 2004

Mr. Chuck Saylor  
Union Pacific Railroad  
1400 Douglas Street  
Mail Stop 1580  
Omaha, NE 68179

Dear Mr. Saylor:

This responds to your July 28, 2004, letter requesting comments from the U.S. Fish and Wildlife Service on the proposed abandonment of the Kearney Industrial Lead from Milepost 3.01 to the end of the Line at Milepost 3.75 near Kearney, Buffalo County, Nebraska. These comments are provided as technical assistance and predevelopment consultation and do not constitute a Service report under authority of the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.) on any required Federal environmental review or permit.

The Service has responsibility, under a number of authorities, for conservation and management of fish and wildlife resources. Chief among the federal statutes with which our office deals are the Coordination Act, Endangered Species Act of 1973, and the National Environmental Policy Act. The Coordination Act requires that fish and wildlife resources be given equal consideration in the planning, implementation, and operation of Federal and federally funded, permitted, or licensed water resource developments. Section 7 of the Endangered Species Act of 1973 outlines procedures for interagency consultations on the effects of Federal actions on federally listed threatened and endangered species. The Service participates in scoping and review of actions significantly affecting the quality of the environment under authority of the National Environmental Policy Act. In addition to these statutes, the Service has authority under several other legislative, regulatory, and executive mandates to promote conservation of fish and wildlife resources for the benefit of the public.

In Nebraska, the Service has special concerns for migratory birds, endangered and threatened species, and other important fish and wildlife resources. We also are concerned about any impacts on Federal and State wildlife refuges and management areas and other public lands, as well as to other areas that support sensitive habitats. Habitats frequently used by important fish and wildlife resources are wetlands, streams, and riparian (streamside) woodlands. Special attention is given to proposed developments that include modification of wetlands, or stream alteration, or contamination of important habitats. The Service recommends ways to avoid, minimize, rectify, reduce, or compensate for damaging impacts to important fish and wildlife resources and their habitats that may be attributed to land and water resource development proposals.

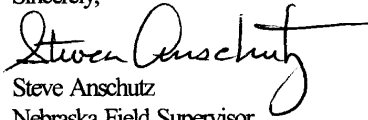
We have reviewed the plans for the proposed project and offer the following comments:

- a. The proposed project does not appear to impact federal fish and wildlife management facilities.
- b. No federally listed threatened and endangered species are expected to occur within the proposed project area
- c.. If wetlands or streams will be impacted by the proposed project, a Department of the Army permit from the U.S. Army Corps of Engineers may be needed. The Service recommends that impacts to wetlands and streams be avoided or minimized. If unavoidable impacts are to occur to aquatic habitats, the Service recommends that compensation (i.e., restoration of a degraded wetland or creation) occur for like wetland type at a ratio of 1.5:1 (acres of wetlands restored/created to acres of wetlands impacted). For unavoidable impacts to streams, the Service recommends that the pattern, profile, and dimension be replaced on a 1:1 basis. Additionally, compensation for impacts to riparian habitats should occur at a minimum ratio of 3:1 (i.e., acres of riparian habitat replaced for acres of riparian habitat impacted). The 3:1 ratio is based on the loss of the habitat and the amount of time that will be required for planted trees to reach maturity.
- d. Under the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712: Ch. 128 *as amended*) construction activities in grassland, wetland, and woodland habitats, and those that occur on bridges (e.g., which may affect swallow nests on bridge girders) that would otherwise result in the taking of migratory birds, eggs, young, and/or active nests should be avoided. Although the provisions of the MBTA are applicable year-round, most migratory bird nesting activity in Nebraska occurs during the period April 1 to July 15. However, some migratory birds are known to nest outside of the aforementioned primary nesting season period. For example, raptors can be expected to nest in woodland habitats during February 1 through July 5, whereas sedge wrens which occur in some wetland habitats normally nest from July 15 to September 10. If the proposed construction project is planned to occur during the primary nesting season or at any other time which may result in the take of nesting migratory birds, the Service recommends that the project proponent (or construction contractor) arrange to have a qualified biologist conduct a field survey of the affected habitats and structures to determine the absence or presence of nesting migratory birds. Surveys must be conducted during the nesting season. It is further recommended that the results of field surveys for nesting birds, along with information regarding the qualifications of the biologist(s) performing the surveys, be thoroughly documented and that such documentation be maintained on file by the project proponent (and/or construction contractor) for potential review by the Service (if requested) until such time as construction on the proposed project has been completed. The Service's Nebraska Field Office should be contacted immediately for further guidance if a field survey identifies the existence of one or more active bird nests which cannot be avoided by the planned construction activities. Adherence to these guidelines will help to avoid the unnecessary take of migratory birds and the possible need for law enforcement action.

Based upon the submitted information, we have no objection to the proposal as currently planned. However, should the plans be modified, we recommend that you reinitiate coordination with this office.

Should you have any further questions, please contact Mr. Wally Jobman within our office at (308)382-6468, extension 16. Thank you for the opportunity to offer comments.

Sincerely,

  
Steve Anschutz  
Nebraska Field Supervisor

cc: NGPC; Lincoln, NE (Attn: Julie Godberson)

# STATE OF NEBRASKA



**Mike Johanns**  
Governor

**DEPARTMENT OF ENVIRONMENTAL QUALITY**

**Michael J. Linder**

Director

Suite 400, The Atrium

1200 'N' Street

P.O. Box 98922

Lincoln, Nebraska 68509-8922

Phone (402) 471-2186

FAX (402) 471-2909

web site : [www.deq.state.ne.us](http://www.deq.state.ne.us)

August 16, 2004

Mr. Charles W. Saylor  
Union Pacific Railroad  
1400 Douglas Street  
Mail Stop 1580  
Omaha, Nebraska 68179

**RE: Proposed Abandonment of the Kearney Industrial Lead from  
Milepost 3.01 to the end of the Line at Milepost 3.75, a distance of .74  
miles near Kearney, Buffalo County, Nebraska; STB Docket No. AB-  
33 (Sub-No.224X)**

Dear Mr. Saylor:

The Nebraska Department of Environmental Quality has reviewed the above referenced project. We have no comments regarding this project that would fall under the jurisdiction of our programs.

If you have questions, feel free to contact me at (402) 471-4231.

Sincerely,

A handwritten signature in black ink, appearing to read "Jay D. Ringenberg".

Jay D. Ringenberg  
Deputy Director

JDR:nh



NEBRASKA STATE HISTORICAL SOCIETY

1500 R STREET, P.O. BOX 82554, LINCOLN, NE 68501-2554  
(402) 471-3270 Fax: (402) 471-3100 1-800-833-6747 [www.nebraskahistory.org](http://www.nebraskahistory.org)

17 August 2004

Charles W. Saylor  
1400 Douglas St.  
Mail Stop 1580  
Omaha, NE 68179

Re: Abandonment  
Kearney Industrial Lead  
3.01 to 3.75  
Buffalo Co.  
H.P. #0407-086-01

Dear Mr. Saylor:

A review of our files indicates that the referenced project does not contain recorded historic resources. It is our opinion that no survey for unrecorded cultural resources will be required. Your undertaking, in our opinion, will have no effect for archaeological, architectural, or historic properties.

There is, however, always the possibility that previously unsuspected archaeological remains may be uncovered during the process of project construction. We therefore request that this office be notified immediately under such circumstances so that an evaluation of the remains may be made, along with recommendations for future action.

Sincerely,

Terry Steinacher  
H.P. Archaeologist

Concurrence:

L. Robert Puschendorf  
Deputy NeSHPO